

Sales of food by restaurants are subject to Retailers' Occupation Tax. 35
ILCS 120/2 (1998 State Bar Edition). (This is a GIL).

July 17, 2000

Dear Xxxxx:

This letter is in response to your letter dated April 20, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's Web site at www.revenue.state.il.us/legalinformation/regs/part1200.

In your letter, you have stated and made inquiry as follows:

Could you please send us the latest revision regarding rates, exemptions, etc. for Sales tax filings for the restaurant business. IBT number is ####. Could you please send to COMPANY. If you prefer, you can fax to my attention at ####.

The Retailers' Occupation Tax imposes a tax at the rate of 6.25% upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (1998 State Bar Edition). The Use Tax Act imposes a tax at the rate of 6.25% upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (1998 State Bar Edition). Sales of food by restaurants are subject to Retailers' Occupation Tax. In addition, the purchaser of the food incurs a corresponding Use Tax liability.

In addition to the State Retailers' Occupation Tax, various local taxes may apply to a transaction. The enclosed copy of 86 Ill. Adm. Code 270.115 explains the manner in which one determines if a local tax, and which local tax, is applicable to a transaction.

As the regulation explains, local taxes are incurred when sales occur within a jurisdiction imposing a local tax. The Department has determined that the most important element of selling occurs when a seller accepts the purchaser's offer to buy. Consequently, selling is deemed to occur where the purchase order is accepted by the seller. It is the rate imposed by a jurisdiction at that location that will determine the correct amount of local taxes. The location of the purchaser, or the point at which title passes to the buyer, is immaterial.

If a purchase order is accepted outside this State but the tangible personal property which is sold is in an inventory of the retailer located within a home rule municipality at the time of sale (or is subsequently produced in the home rule municipality), then delivered in Illinois to the purchaser, the place where the property is located at the time of sale (or is subsequently produced in

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Illinois) will determine where the seller is engaged in business for Home Rule Municipal Retailers' Occupation Tax purposes with respect to such sale. See Section 270.115(b)(3).

Please find enclosed a copy of 86 Ill. Adm. Code 130.2070 concerning Sales of Containers, Wrapping and Packing Materials and Related Products. As you can see from the regulation, nonreusable tangible personal property sold to food and beverage vendors, including persons engaged in the business of operating restaurants, cafeterias or drive-ins, is a sale for resale when it is transferred to customers in the ordinary course of business as part of the sale of food or beverages and is used to deliver, package, or consume food or beverages, regardless of where consumption of the food or beverage occurs. See Section 130.2070(b)(3). Examples of such items include, but are not limited to, paper and plastic cups, plates, baskets, boxes, sleeves, buckets or other containers, utensils, straws, placemats, napkins, doggie bags and wrapping or packaging materials that cannot be reused by the food or beverage vendor and which are transferred to customers as part of the sale of food or beverages. Such items do not include items that are used by the food vendor in conducting his business and that are not transferred to the customer, including but not limited to, paper products, serving trays, serving dishes, utensils or condiment bottles.

When persons or businesses purchase tangible personal property from vendors that they will resell to purchasers, they may purchase such items tax-free by providing their vendors with properly executed Certificates of Resale. Certificates of Resale are valid if they contain the information set forth in 86 Ill. Adm. Code 130.1405. If such persons or businesses fail to provide Certificates of Resale, the sales are presumed to not be for resale and sellers would incur Retailers' Occupation Tax and be required to collect the corresponding Use Tax from purchasers. Please note, however, that consumable supplies used by restaurants are subject to Use Tax.

Generally, proceeds from mandatory service charges that are in fact turned over as tips or as a substitute for tips to the employees who participate directly in preparing, serving, hosting or cleaning up the food or beverage function with respect to which the service charge is imposed are not subject to tax. 35 ILCS 120/2-5(15).

When individual members of exclusively charitable, religious or educational organizations, or individual employees of governments or their agencies, purchase meals from restaurants, the restaurants incur Retailers' Occupation Tax liabilities. However, if governments, churches, schools, or charities possess valid tax exemption identification numbers ("E" numbers) issued by the Department and the organization itself directly purchases meals in the performance of some organizational function, such purchases could be made tax free upon presentation of the Department-issued exemption numbers.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

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If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk

Enc.